

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Richard and Catherine Snyder,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:08cv1270 (GBL)
)	
Greenberg Traurig, LLP, et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION

THIS MATTER is before the Court on 1) Defendant Diane Von Furstenberg Studio's ("DVF") Motion to Dismiss Plaintiffs' Complaint; and 2) Greenberg Traurig Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) and Request for Payment of Costs and a Stay of Proceedings Pursuant to Federal Rule of Civil Procedure 41(d). This case concerns Plaintiffs Richard and Catherine Snyder's claims against Defendant DVF and its previous attorneys for the allegedly improper execution of a court-authorized search of Plaintiffs' home and subsequent seizure of property, including counterfeit DVF goods being sold by Mrs. Snyder over the internet. There are two (2) issues before the Court. The first issue is whether Plaintiffs' claims are barred by claim preclusion where DVF previously sued the Snyders for trademark infringement and the court-authorized search of the Snyders' home was part of that previous lawsuit. The second issue is whether the Court should grant the Law Defendants' motion for costs where Plaintiffs, who were then proceeding pro se, dismissed their

original claims and later reasserted some of the same claims through counsel.

The Court grants Defendants' Motions to Dismiss.¹ The Court holds that Plaintiffs' claims are precluded because the fraudulent trademark registration and improper search and seizure claims that Plaintiffs now assert arise from the same series of transactions as the 2006 litigation and because the present parties were all parties or their privies in the earlier suit. The Court denies the Law Defendants' Motion for Costs because awarding costs in this case would not serve the purposes of Rule 41(d). The Court discusses each of its holdings in greater detail below.

I. BACKGROUND

Plaintiffs Richard and Catherine Snyder are husband and wife. Defendant Diane Von Furstenberg Studio is a limited partnership engaged in the business of manufacturing and selling designer clothing and goods. Defendant Greenberg Traurig, LLP, is the law firm that represented DVF in its 2006 action against

¹The First Amended Complaint does not clearly set forth which claims are alleged as to which Defendants. As such, the Court construes the First Amended Complaint as alleging all counts against all named Defendants and dismisses all counts as to all Defendants.

Plaintiffs. Defendants Mr. Harley Lewin, Ms. Janet Shih Hajek, and Mr. Steve Wadyka (collectively, with Greenberg Traurig, "the Law Defendants") are the attorneys who represented DVF in the previous action.

The facts of the present action bear a stark resemblance to those of the 2006 action. In November 2006, DVF, through its counsel, the Law Defendants, filed an action in this Court against the Snyders for selling counterfeit DVF products over the internet.² On December 4, 2006, DVF filed an ex parte motion for a seizure order. During an ex parte hearing, the Law Defendants moved the Court for a search and seizure order and the issuance of a temporary restraining order ("TRO").

Following the ex parte hearing, the Court issued a temporary restraining order against Mrs. Snyder and authorized a search of the Snyders' residence and seizure the following items:

1. Any and all unauthorized and unlicensed merchandise bearing the Von Furstenberg marks, as well as the means for making the same;
2. The books and records relating thereto, including but not limited to records and data contained in electronic format on computers, servers, hard drives, zip drives and disks;
3. The containers or vehicles in which the same are held or transported, which Defendants sell, attempt to sell or hold for sale; and
4. Any counterfeit Von Furstenberg product,

²*Diane von Furstenberg Studio v. Snyder*, No. 1:06-cv-1356 (E.D. Va.) (Cacheris, J.).

reproduction, copies or colorable imitations thereof, including dresses or other items.³

Acting upon the Seizure Order issued by the Court, on December 8, 2006, the Law Defendants, along with two members of the Herndon Police Department, entered the home of the Snyders to execute the search and seizure. The Snyders allege that Mr. Wadyka "flashed a badge" at the Herndon officers to induce them to assist in the execution of the warrant. According to the Snyders, the Law Defendants conducted the search and directed the Snyders at all times, intentionally giving the impression that they were conducting the search under color of law. Although the Law Defendants were in the Snyders' home for approximately three hours, the Herndon officers left after approximately one hour. The Law Defendants recovered fifty-four counterfeit DVF dresses during the search. The Snyders allege, however, that the Law defendants also removed dozens of items from their home that were not covered by the warrant. The Snyders did not raise a challenge to the execution of the search and seizure before the Court during the 2006 litigation.

Months after the search and seizure, on August 15, 2007, DVF moved for summary judgment on all of its claims against the Snyders. In considering the motion as to the trademark infringement claim, the Court found that the registration of

³Seizure Order, Dec. 7, 2006, Dkt. No. 17.

DVF's mark with the U.S. Patent and Trademark Office ("PTO") created a presumption of its validity, which the Snyders failed to rebut. The Court granted DVF's motion as to the trademark infringement, unfair competition, and trademark dilution claims and permanently enjoined Mrs. Snyder from selling counterfeit DVF products. Mem. Op., Sept. 10, 2007, at 15. On September 21, 2007, DVF dismissed its claims against Mr. Snyder with prejudice. On October 23, 2007, following a hearing on damages, the Court entered judgment against Catherine Snyder and awarded DVF \$100,000 in statutory damages.

On May 10, 2007, the Snyders filed suit in this Court alleging violations of 42 U.S.C. 1983, intentional infliction of emotional harm, and abuse of process against the Law Defendants in relation to the execution of the Seizure Order at the Snyders' home. On June 25, the Law Defendants moved to dismiss those claims. On July 24, 2007, the day before the parties were to serve discovery, the Snyders filed an Amended Complaint. The Law Defendants subsequently served discovery on the Snyders on July, 25, 2007, pursuant to the Discovery Order. On July 30, 2007, the Snyders dismissed their claims pursuant to Federal Rule of Civil Procedure 41.

On December 8, 2008, the Snyders filed a Complaint, again alleging counts arising out of the execution of the Seizure Order at their home. On February 20, 2009, Plaintiffs filed the First

Amended Complaint, alleging the following eight claims:

Count I - Cancellation of Trademark pursuant to 15 U.S.C. § 1119 and damages for fraudulent registration;

Count II - Deprivation of Property in violation of 42 U.S.C. § 1983 and under *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narcotics*, 403 U.S. 338 (1971);
Count III - Deprivation of privacy and sanctity of home pursuant to 42 U.S.C. § 1983 and under *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narcotics*, 403 U.S. 338 (1971);

Count IV - Abuse of Trademark Act authority (§ 1116);

Count V - Abuse of Process;

Count VI - Conversion and/or Trespass to Chattels;

Count VII - Trespass; and

Count VIII - False Imprisonment.

DVF and the Law Defendants now separately move for dismissal of all claims against them. The Law Defendants also move for payment of costs and a stay of the proceedings pursuant to Federal Rule of Civil Procedure 41(d).

II. STANDARD OF REVIEW

A Federal Rule of Civil Procedure 12(b)(6) motion should be granted unless an adequately stated claim is "supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 561 (2007) (internal citations omitted); see FED. R. CIV. P. 12(b)(6).

"A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do."

Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009); *Twombly*, 550 U.S. at 555. A complaint is also insufficient if it relies upon "naked assertions devoid of further factual enhancement." *Iqbal*, 129 S. Ct. at 1949 (internal citations omitted).

In order to survive a Rule 12(b)(6) motion to dismiss a complaint must set forth "a claim for relief that is plausible on its face." *Id.*; *Twombly*, 550 U.S. at 570. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949; *Twombly*, 555 U.S. at 556.

In considering a Rule 12(b)(6) motion, the Court must construe the complaint in the light most favorable to the plaintiff, read the complaint as a whole, and take the facts asserted therein as true. *Mylan Lab., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993). In addition to the complaint, the court may also examine "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509 (2007). "Conclusory allegations regarding the legal effect of the facts alleged" need not be accepted. *Labram v. Havel*, 43 F.3d 918, 921 (4th Cir. 1995). Because the central purpose of the complaint is to provide the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it

rests," the plaintiff's legal allegations must be supported by some factual basis sufficient to allow the defendant to prepare a fair response. *Conley v. Gibson*, 355 U.S. 41, 47 (1957).

III. ANALYSIS

The Court grants Defendants' Motions to Dismiss because Plaintiffs' claims are barred by the doctrine of claim preclusion. The Court denies the Law Defendants' Motion for Costs because none of the stated purposes of Rule 41(d) would be served by awarding costs in this case. The Court addresses each holding in order below.

A. Claim Preclusion

The Court grants Defendants' Motions to Dismiss Plaintiffs' claims because they are barred by claim preclusion. "Under the doctrine of claim preclusion, '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *Rivet v. Regions Bank of La.*, 522 U.S. 470, 476 (1998) (quoting *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981)). In addition to barring claims that were actually raised and fully litigated, claim preclusion "prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Peugeot Motors of Am., Inc. v. E. Auto Distribs., Inc.*, 892 F.2d 355, 359 (4th

Cir. 1989) (quoting *Brown v. Felson*, 442 U.S. 127, 131 (1979)). Thus, claim preclusion bars a claim where the new litigation "arises out of the same transaction or series of transactions as the claim resolved by the prior judgment." *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999) (internal citations omitted).

Claim preclusion applies where there is "1) a final judgment on the merits in a prior suit; 2) an identity of the cause of action in both the earlier and the later suit; and 3) an identity of parties or their privies in the two suits." *Pueschel v. United States*, 369 F.3d 345, 354-55 (4th Cir. 2004); see also *Martin v. Am. Bancorporation Ret. Plan*, 407 F.3d 643, 650 (4th Cir. 2005). Only the second and third factors are at issue in this case.

1. Identity of the cause of action

The Court finds that there is an identity of the cause of action in the present and 2006 suits. An identity of the cause of action "does not turn on whether the claims asserted are identical," but instead "turns on whether the suits and the claims asserted therein 'arise out of the same transaction or series of transactions or the same core of operative facts.'" *Pueschel*, 369 F.3d at 355 (quoting *In re Varat Enters., Inc.*, 81 F.3d 1310, 1316 (4th Cir. 1996)).

"Transaction" in the claim preclusion context refers to "a

natural grouping or common nucleus of operative facts." *Pittston*, 199 F.3d at 704 (internal citations omitted). In assessing whether there is an identity of the cause of action between two claims, courts will consider the "relatedness in time, space, origin, or motivation" of the operative facts, "and whether, taken together, they form a convenient unit for trial purposes." *Id.*

Here, all of Plaintiffs' presently asserted claims arise out of the same series of transactions as DVF's 2006 lawsuit. Plaintiffs' claims fall into two general categories: 1) a claim challenging the validity of the DVF trademark; and 2) claims challenging the execution of the court-authorized search and seizure.

As to the challenge to the DVF trademark, Count I clearly arises from the same core nucleus of operative fact because the validity of the mark was considered and determined during the 2006 infringement action. In the 2006 litigation, on August 15, 2007, DVF moved for summary judgment on all of its claims against the Snyders, including its trademark infringement claim. In considering the trademark infringement claim and the mark's validity, the Court stated that the first step in prevailing on a trademark infringement claim is to show possession of a valid, protectible trademark. *Mem. Op.*, Sept. 10, 2007, at 5 (quoting *Lone Star Steakhouse & Saloon, Inc. v. Alpha of Va., Inc.*, 43

F.3d 922, 930 (4th Cir. 1995)). The Court acknowledged that registration of the mark with the PTO served as prima facie evidence of validity, thereby shifting the burden to the Snyders to "introduce sufficient evidence to rebut the presumption of plaintiff's right to . . . [exclusive] use." *Id.* (quoting *Keebler Co. v. Rovira Biscuit Corp.*, 624 F.2d 366, 373 n.4 (1st Cir. 1980)). The Court expressly noted that the Snyders did not "deny that the DVF marks in this action are properly registered." *Id.* at 6. Instead, the Snyders argued that the marks were not "currently used in commerce and thus are not valid or protectible." *Id.* The Court held that the Snyders failed to rebut the presumption of validity created by the registration of DVF's mark. *Id.*

Now, in a separate suit brought roughly a year and a half later, Plaintiffs attempt to revisit the issue of the mark's validity and seek its cancellation, alleging that DVF committed fraud in its trademark application by claiming current use of the mark for many types of goods not manufactured under the DVF trademark. (Am. Compl. ¶¶ 64-66, 69.) Plaintiffs, however, missed their opportunity to litigate this issue when they failed to raise it during the 2006 proceedings. As noted above, claim preclusion bars not only the claims and defenses actually raised and asserted, but also those "previously available to the parties, regardless of whether they were asserted or determined

in the prior proceeding.” *Peugeot*, 892 F.2d at 359. Plaintiffs’ fraudulent registration claim was clearly available as a defense during the 2006 litigation, but Plaintiffs failed to challenge the registration of the mark at that time. The Snyders did not raise their fraudulent registration argument in the 2006 suit when the validity of the DVF trademark was squarely before the Court. As such, Count I is barred.

Counts II through VII arise from the same series of transactions as the 2006 suit because all of the counts concern the execution of the Seizure Order which was obtained during, and in furtherance of, the 2006 litigation. DVF moved for a seizure order which was granted by the Court. Pursuant to the Court’s Order, the Law Defendants, with Herndon police, executed a search of the Snyders’ home and seized dozens of counterfeit DVF dresses, among other things. In acquiring evidence of the DVF counterfeiting operation from the Snyders’ home, DVF was able to successfully move for summary judgment on several of its claims. Thus, the series of transactions involved in the 2006 litigation included the application for, granting, and execution of the Seizure Order.

It is evident that Counts II through VII arise from the same series of transactions. In the First Amended Complaint, Plaintiffs challenge the grounds asserted by DVF and the Law Defendants in obtaining the Seizure Order. (Am. Compl. ¶¶ 17-

24.) They also allege various ways in which the Law Defendants improperly executed the search and seizure. (Am. Compl. ¶¶ 27-47.) The facts underlying Plaintiffs' present claims and those of the 2006 litigation, when "taken together . . . form a convenient unit for trial purposes." *Pittston*, 199 F.3d at 704. As such, Counts II through VII are barred.

Plaintiffs argue that preclusion in this case is properly determined using the rules of defendant preclusion. Under defendant preclusion, a claim is barred only if 1) it was a compulsory counterclaim, or 2) it amounts to a collateral attack on the prior judgment. *See Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1324 (Fed. Cir. 2008) (applying defendant preclusion to a trademark cancellation claimant who was the defendant in a prior infringement action). Plaintiffs argue that claim preclusion does not apply here because neither of the above factors are present.

Plaintiffs cite to no Fourth Circuit caselaw adopting this test. As Fourth Circuit precedent makes clear, claim preclusion is not so strictly concerned with the party's specific role in the previous litigation, but instead more generally requires participation in the prior action or privity with one of the parties. *See, e.g., Pueschel*, 369 F.3d at 354 ("Under the doctrine of *res judicata*, or claim preclusion, '[a] final judgment on the merits of an action precludes the parties or

their privies from relitigating issues that were or could have been raised in that action.") (citations omitted) (emphasis added)); *Meekins v. United Transp. Union*, 946 F.2d 1054, 1057 (4th Cir. 1991) ("[N]ot only does res judicata bar claims that were raised and fully litigated, it prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." (citations omitted) (emphasis added)). Additionally, the greater focus is on whether the party had a full and fair opportunity to litigate her claims and defenses in the previous action. See *Dionne v. City of Baltimore*, 40 F.3d 677 (4th Cir. 1994) ("because of [its] drastic consequence, a critical predicate for applying claim preclusion is that the claimant shall have had a fair opportunity to advance all its "same transaction" claims in a single unitary proceeding.") Plaintiffs do not argue that they were in some way denied the opportunity to raise their claims in the previous action.

Plaintiffs also argue that their claims do not arise from the same nucleus of operative fact because their present claims were not compulsory counterclaims in the 2006 suit. Plaintiffs rely on Virginia's claim preclusion law for their position, but federal law determines the preclusive effect of a prior federal judgment. *Shoup v. Bell & Howard Co.*, 872 F.2d 1178, 1179 (4th

Cir. 1989). The federal law of claim preclusion bars all claims that were available, not merely those that were compulsory. See *Brown*, 442 U.S. at 131 ("Res judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding."); see also *Meekins*, 946 F.2d at 1057. The Court therefore rejects Plaintiffs' arguments and holds that there is an identity of the cause of action in the present and 2006 lawsuits.

2. Identity of parties or their privies

The Court finds an identity of parties or their privies in the two suits as well. "To be in privity with a party to a former litigation, the non-party must be 'so identified in interest with a party to former litigation that he represents precisely the same legal right in respect to the subject matter involved.'" *Martin*, 407 F.3d at 651. "The concept of privity requires an alignment of interests and not an exact identity of parties." *Weinberger v. Tucker*, 510 F.3d 486, 492 (4th Cir. 2007).

As to Plaintiffs and DVF, there is an identity of parties.

In the 2006 suit, DVF brought claims against Mr. and Mrs. Snyder. DVF voluntarily dismissed its claims against Mr. Snyder and obtained a judgment against Mrs. Snyder. As to the Law Defendants, there is an identity of privies. The Law Defendants

acted as counsel to DVF and represented DVF's interests throughout the litigation.

Plaintiffs argue that, as to the Law Defendants, there is no identity of privies because the Law Defendants were not in privity with DVF in the previous litigation. This argument fails for two reasons. First, a party and its attorney are in privity for purposes of res judicata when the claims in the current proceeding turn on the conduct of the attorney in the earlier suit. See *Weinberger*, 510 F.3d at 492-93. Here, Plaintiffs' claims depend on the Law Defendants' conduct while representing DVF in the prior case. Second, privity exists because the Law Defendants acted as DVF's agents in the earlier case and during the execution of the seizure order. See *Field Auto City, Inc. v. GMC*, 476 F. Supp. 2d 545, 558 n.15 (E.D. Va. 2007) (holding that a party's agent is its privy under Virginia law for purposes of res judicata); *Canon U.S.A., Inc. v. Lease Group Res., Inc.*, No. 1:03cv1192, 2007 U.S. Dist. LEXIS 37710, at *17 n.4 (E.D. Va. May 21, 2007) (same).

Plaintiffs also argue that there is no identity of parties as to Mr. Snyder because Mr. Snyder was not a party to the previous litigation. However, a voluntary dismissal with prejudice "is a valid final judgment on the merits" that has res judicata effect. *Kenny v. Quigg*, 820 F.2d 665, 669 (4th Cir. 1987); see also *Am. Cyanamid Co. v. Capuano*, 381 F.3d 6, 17 (1st

Cir. 2004) ("[A] voluntary dismissal with prejudice is ordinarily deemed a final judgment that satisfies the res judicata criterion.") (citations omitted). Here, although DVF voluntarily dismissed its claims against Mr. Snyder with prejudice in the 2006 action, Mr. Snyder was a party to the litigation at the time that an objection to the search would have been appropriate. As such, there is an identity of parties.

Even if not a party in the 2006 action, Mr. Snyder and Mrs. Snyder were in privity. "The concept of privity requires an alignment of interests and not an exact identity of parties." *Weinberger*, 510 F.3d at 492. Mr. Snyder is Mrs. Snyder's husband and the joint owner of the searched property. Mr. Snyder shared a home with Mrs. Snyder and shared bank accounts that were subject to the asset freeze agreed to by the parties and ordered by the Court in the 2006 action. Mr. Snyder's interests are sufficiently aligned with Mrs. Snyder's to establish privity. As such, because there is both an identity of the cause of action and an identity of the parties or their privies, the Court grants Defendants' separate Motions to Dismiss because Plaintiffs' claims are barred by claim preclusion.

C. Costs

The Court denies the Law Defendants' Motion for Payment of Costs pursuant to Federal Rule of Civil Procedure 41(d) because neither of the purposes of Rule 41(d) are not served by awarding costs in this case. Rule 41(d) provides

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

FED. R. CIV. P. 41(d). Costs awarded under Rule 41(d) "are intended to serve as a deterrent to forum shopping and vexatious litigation." *Simeone v. First Bank Nat'l Ass'n*, 971 F.2d 103, 108 (8th Cir. 1992) (internal citations omitted); see also *Esposito v. Piatrowski*, 223 F.3d 497, 501 (7th Cir. 2000); *Larsen v. Senate of the Commonwealth*, 955 F. Supp. 1549, 1582 (M.D. Pa. 1997). Courts have broad discretion to award costs under Rule 41(d). FED. R. CIV. P. 41(d); *Crespo v. WFS Fin., Inc.*, 580 F. Supp. 2d 614, 624 (N.D. Ohio 2008).

To determine whether costs under Rule 41(d) are appropriate, courts will look to whether the current action "is based on or includ[es]' the same claim against the same party-defendant." *Esposito*, 223 F.3d at 499 (citing *Szabo Food Serv. v. Canteen Corp.*, 823 F.2d 1073, 1077 (7th Cir. 1987)). Although bad faith is not required to award costs under Rule 41(d), *Rogers v. Wal-*

Mart Stores, Inc., 230 F.3d 868, 874 (6th Cir. 2000), a good faith reason for the dismissal may provide strong grounds for denying a Rule 41(d) motion. See *Beam Laser Sys. v. Cox Communs., Inc.*, 117 F. Supp. 2d 515, 520 (E.D. Va. 2000).

Awarding costs in this case would deter neither forum shopping nor vexatious litigation. Here, Plaintiffs have at all times sought to litigate their claims in the Eastern District of Virginia. Plaintiffs were proceeding pro se in the complex areas of civil rights and trademark law and dismissed their claims to seek assistance of counsel rather than face the potential loss of their claims in a looming motion to dismiss. The Court finds that dismissal under these circumstances was reasonable and not vexatious. As such, the Court denies the Law Defendants' Motion for Payment of Costs and a Stay of Proceedings Pursuant to Federal Rule of Civil Procedure 41(d).

IV. CONCLUSION

The Court grants Defendants' Motions to Dismiss Counts I through VII of the First Amended Complaint because the claims are barred by claim preclusion. The Court denies the Law Defendants' Motion for Payment of Costs and a Stay of Proceedings Pursuant to Federal Rule of Civil Procedure 41(d) because an award of costs in this case would not serve to deter forum shopping or vexatious litigation. Therefore, it is hereby

ORDERED that Defendant Diane Von Furstenberg Studio's Motion to Dismiss Plaintiffs' Complaint is GRANTED. Counts I through VII of the First Amended Complaint are DISMISSED WITH PREJUDICE.

It is further

ORDERED that Greenberg Traurig Defendants' Motion to Dismiss Pursuant to Rule 12(b)(6) and Request for Payment of Costs and a Stay of Proceedings Pursuant to Federal Rule of Civil Procedure 41(d) is GRANTED IN PART and DENIED IN PART. The Court GRANTS the Greenberg Traurig Defendants' Motion to Dismiss. Counts I through VII of the First Amended Complaint are DISMISSED WITH PREJUDICE. The Court DENIES their Motion for Payment of Costs and a Stay of Proceedings Pursuant to Federal Rule of Civil Procedure 41(d).

The Clerk is directed to forward a copy of this Order to Counsel.

Entered this 9th day of October, 2009.

Alexandria, Virginia

10/ 09 /09

/s/
Gerald Bruce Lee
United States District Judge